

1 MAYER BROWN LLP
2 JOHN NADOLENCO (SBN 181128)
3 JNadolenco@mayerbrown.com
4 BRONWYN F. POLLOCK (SBN 210912)
5 BPollock@mayerbrown.com
6 350 South Grand Avenue, 25th Floor
7 Los Angeles, CA 90071-1503
8 Telephone: (213) 229-9500
9 Facsimile: (213) 625-0248

10 Attorneys For Defendant
11 COURTYARD HOLDINGS, LP

12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 OUTERBRIDGE ACCESS
15 ASSOCIATION, SUING ON
16 BEHALF OF DIANE CROSS; and
17 DIANE CROSS, An Individual,

18 Plaintiffs,

19 v.

20 MARIE CALLENDER'S PIE
21 SHOPS, INC. d.b.a. MARIE
22 CALLENDER'S #254; PACIFIC
23 BAGELS, LLC d.b.a. BRUEGGARS
24 BAGELS; COURTYARD
25 HOLDINGS, LP; PSS PARTNERS,
26 LLC; AND DOES 1 THROUGH 10,
27 Inclusive,

28 Defendants.

CASE NO. 07 CV 2129 BTM (AJB)

**ANSWER OF DEFENDANT
COURTYARD HOLDINGS, LP TO
PLAINTIFFS' COMPLAINT**

Honorable Barry T. Moskowitz

1 Defendant Courtyard Holdings, LP (“Courtyard”) hereby answers the Class
 2 Action Complaint (the “Complaint”) of Plaintiffs Outerbridge Access Association,
 3 Suing on Behalf of Diane Cross, and Diane Cross (jointly, “Plaintiffs”) as follows:

4 **PRELIMINARY STATEMENT**

5 The Complaint contains allegations concerning parties other than Courtyard.
 6 Unless otherwise specifically indicated, Courtyard denies knowledge or
 7 information sufficient to form a belief as to the truth of any of the allegations
 8 concerning the conduct or knowledge of any party other than the Courtyard.

9 **ANSWER**

10 **INTRODUCTION¹**

11 1. Courtyard admits that Plaintiffs purport to sue on behalf of
 12 Outerbridge Access Association and its members and Diane Cross. Courtyard
 13 denies that it has discriminated against individuals with disabilities. Courtyard is
 14 without sufficient knowledge or information to form a belief as to the truth of the
 15 remaining allegations in Paragraph 1 of the Complaint, and on that basis denies
 16 those allegations.

17 **JURISDICTION AND VENUE**

18 2. The allegations contained in Paragraph 2 of the Complaint are legal
 19 conclusions to which a response is not required. To the extent Paragraph 2 of the
 20 Complaint alleges facts, Courtyard denies the allegations.

21 **SUPPLEMENTAL JURISDICTION**

22 3. The allegations contained in Paragraph 3 of the Complaint are legal
 23 conclusions to which a response is not required. To the extent Paragraph 3 of the
 24 Complaint alleges facts, Courtyard denies the allegations.

25 ///

26
 27 ¹ The headings and subheadings contained herein are taken verbatim from Plaintiffs’
 28 Complaint. To the extent such headings constitute allegations of wrongdoing against Courtyard,
 they are denied.

NAMED DEFENDANTS AND NAMED PLAINTIFF

4. Courtyard admits that it is the owner and lessor of certain real property located at 11122 and 11134 Rancho Carmel Drive, San Diego, California 92128 and that its tenants at the property include Marie Callender Pie Shops, Inc. and Pacific Bagels, LLC. Courtyard is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 4 of the Complaint, and on that basis denies the remaining allegations contained in Paragraph 4 of the Complaint.

5. Courtyard admits that Plaintiffs' Complaint states that it uses the words Plaintiff, Plaintiffs, Plaintiff's Member and Plaintiff's Members to refer to Outerbridge Access Association, suing on behalf of Diane Cross and Diane Cross, an Individual.

6. Courtyard denies that it is or was a subsidiary, parent entity, employer, employee, or agent of Marie Callender's Pie Shops, Inc. d.b.a. Marie Callender's #254, Pacific Bagels, LLC d.b.a. Brueggars Bagels, PSS Partners, LLC, or any other defendant. Courtyard is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 6 of the Complaint, and on that basis denies those allegations.

7. Courtyard is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 7 of the Complaint, and on that basis denies those allegations.

STATEWIDE CLASS ACTION ALLEGATIONS UNDER FED. R. CIV. P.**23(B) AS TO ALL DEFENDANTS**

8. Courtyard is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 8 of the Complaint, and on that basis denies those allegations. To the extent the allegations contained in Paragraph 8 of the Complaint are legal conclusions, no response is required.

1 9. Courtyard admits that it is the owner and lessor of certain real
2 property located at 11122 and 11134 Rancho Carmel Drive, San Diego, California
3 92128 and that its tenants at the property include Marie Callender Pie Shops, Inc.
4 and Pacific Bagels, LLC. Courtyard is without sufficient knowledge or
5 information to form a belief as to the truth of the remaining allegations in
6 Paragraph 9 of the Complaint, and on that basis denies those allegations.

7 10. Courtyard is without sufficient knowledge or information to form a
8 belief as to the truth of the allegations in Paragraph 10 of the Complaint, and on
9 that basis denies those allegations. To the extent the allegations contained in
10 Paragraph 10 of the Complaint are legal conclusions, no response is required.

11 11. Courtyard is without sufficient knowledge or information to form a
12 belief as to the truth of the allegations in Paragraph 11 of the Complaint, and on
13 that basis denies those allegations. To the extent the allegations contained in
14 Paragraph 11 of the Complaint are legal conclusions, no response is required.

15 **CONCISE SET OF FACTS**

16 12. Courtyard is without sufficient knowledge or information to form a
17 belief as to the truth of the allegations in Paragraph 12 of the Complaint, and on
18 that basis denies those allegations.

19 13. Courtyard admits that it is the owner and lessor of certain real
20 property located at 11122 and 11134 Rancho Carmel Drive, San Diego, California
21 92128 and that its tenants at the property include Marie Callender Pie Shops, Inc.
22 and Pacific Bagels, LLC. Courtyard is without sufficient knowledge or
23 information to form a belief as to the truth of the remaining allegations in
24 Paragraph 13 of the Complaint, and on that basis denies those allegations.

25 14. Courtyard is without sufficient knowledge or information to form a
26 belief as to the truth of the allegations in Paragraph 14 of the Complaint, and on
27 that basis denies those allegations.
28

1 15. Courtyard is without sufficient knowledge or information to form a
2 belief as to the truth of the allegations in Paragraph 15 of the Complaint, and on
3 that basis denies those allegations. To the extent the allegations contained in
4 Paragraph 15 of the Complaint are legal conclusions, no response is required.

5 16. Courtyard is without sufficient knowledge or information to form a
6 belief as to the truth of the allegations in Paragraph 16 of the Complaint, and on
7 that basis denies those allegations.

8 17. Courtyard is without sufficient knowledge or information to form a
9 belief as to the truth of the allegations in Paragraph 17 of the Complaint, and on
10 that basis denies those allegations.

11 18. Courtyard is without sufficient knowledge or information to form a
12 belief as to the truth of the allegations in Paragraph 18 of the Complaint, and on
13 that basis denies those allegations. To the extent the allegations contained in
14 Paragraph 18 of the Complaint are legal conclusions, no response is required.

15 19. Courtyard is without sufficient knowledge or information to form a
16 belief as to the truth of the allegations in Paragraph 19 of the Complaint, and on
17 that basis denies those allegations.

18 20. Courtyard is without sufficient knowledge or information to form a
19 belief as to the truth of the allegations in Paragraph 20 of the Complaint, and on
20 that basis denies those allegations.

21 21. Courtyard is without sufficient knowledge or information to form a
22 belief as to the truth of the allegations in Paragraph 21 of the Complaint, and on
23 that basis denies those allegations.

24 22. Courtyard is without sufficient knowledge or information to form a
25 belief as to the truth of the allegations in Paragraph 22 of the Complaint, and on
26 that basis denies those allegations.

27 ///

23. Courtyard is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 23 of the Complaint, and on that basis denies those allegations. To the extent the allegations contained in Paragraph 23 of the Complaint are legal conclusions, no response is required.

24. Courtyard is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 24 of the Complaint, and on that basis denies those allegations.

25. Courtyard is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 25 of the Complaint, and on that basis denies those allegations. To the extent the allegations contained in Paragraph 25 of the Complaint are legal conclusions, no response is required.

26. Courtyard is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 26 of the Complaint, and on that basis denies those allegations.

NOTICE

27. The allegations contained in Paragraph 27 of the Complaint are legal conclusions to which a response is not required. To the extent Paragraph 27 of the Complaint alleges facts, Courtyard denies the allegations.

WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT

28. No allegations are made in Paragraph 28 of the Complaint; to the extent that allegations were implied, Courtyard denies all allegations.

29. Courtyard denies the allegations contained in Paragraph 29 of the Complaint.

DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS – Claims Under the Americans with Disabilities Act of 1990

CLAIM I AGAINST ALL DEFENDANTS: **Denial Of Full And Equal Access**

30. Courtyard is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 30 of the Complaint, and on that basis denies those allegations. To the extent the allegations contained in Paragraph 30 of the Complaint are legal conclusions, no response is required.

31. Courtyard is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 31 of the Complaint, and on that basis denies those allegations. To the extent the allegations contained in Paragraph 31 of the Complaint are legal conclusions, no response is required.

CLAIM II AGAINST ALL DEFENDANTS: **Failure To Make Alterations In Such A Manner That The Altered Portions Of The Facility Are Readily Accessible And Usable By Individuals With Disabilities**

32. Courtyard is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 32 of the Complaint, and on that basis denies those allegations. To the extent the allegations contained in Paragraph 32 of the Complaint are legal conclusions, no response is required.

33. Courtyard is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 33 of the Complaint, and on that basis denies those allegations. To the extent the allegations contained in Paragraph 33 of the Complaint are legal conclusions, no response is required.

34. Courtyard is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 34 of the Complaint, and on that basis denies those allegations. To the extent the allegations contained in Paragraph 34 of the Complaint are legal conclusions, no response is required.

35. Courtyard is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 35 of the Complaint, and on

1 that basis denies those allegations. To the extent the allegations contained in
 2 Paragraph 35 of the Complaint are legal conclusions, no response is required.

3 CLAIM III AGAINST ALL DEFENDANTS: **Failure To Remove Architectural**
 4 **Barriers**

5 36. Courtyard is without sufficient knowledge or information to form a
 6 belief as to the truth of the allegations in Paragraph 36 of the Complaint, and on
 7 that basis denies those allegations. To the extent the allegations contained in
 8 Paragraph 36 of the Complaint are legal conclusions, no response is required.

9 CLAIM IV AGAINST ALL DEFENDANTS: **Failure To Modify Practices,**
 10 **Policies And Procedures**

11 37. Courtyard is without sufficient knowledge or information to form a
 12 belief as to the truth of the allegations in Paragraph 37 of the Complaint, and on
 13 that basis denies those allegations. To the extent the allegations contained in
 14 Paragraph 37 of the Complaint are legal conclusions, no response is required.

15 38. Courtyard is without sufficient knowledge or information to form a
 16 belief as to the truth of the allegations in Paragraph 38 of the Complaint, and on
 17 that basis denies those allegations. To the extent the allegations contained in
 18 Paragraph 38 of the Complaint are legal conclusions, no response is required.

19 39. Courtyard admits that Plaintiffs pray for the relief requested but
 20 denies that Plaintiffs are entitled to any relief, and otherwise denies the allegations
 21 in Paragraph 39 of the Complaint.

22 SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS—**CLAIMS**
 23 **UNDER CALIFORNIA ACCESSIBILITY LAWS**

24 CLAIM I: **Denial Of Full And Equal Access**

25 40. Courtyard is without sufficient knowledge or information to form a
 26 belief as to the truth of the allegations in Paragraph 40 of the Complaint, and on
 27
 28

1 that basis denies those allegations. To the extent the allegations contained in
2 Paragraph 40 of the Complaint are legal conclusions, no response is required.

3 41. Courtyard is without sufficient knowledge or information to form a
4 belief as to the truth of the allegations in Paragraph 41 of the Complaint, and on
5 that basis denies those allegations. To the extent the allegations contained in
6 Paragraph 41 of the Complaint are legal conclusions, no response is required.

7 CLAIM II: **Failure to Modify Practices, Policies And Procedures**

8 42. Courtyard is without sufficient knowledge or information to form a
9 belief as to the truth of the allegations in Paragraph 42 of the Complaint, and on
10 that basis denies those allegations. To the extent the allegations contained in
11 Paragraph 42 of the Complaint are legal conclusions, no response is required.

12 CLAIM III: **Violation Of The Unruh Act**

13 43. Courtyard is without sufficient knowledge or information to form a
14 belief as to the truth of the allegations in Paragraph 43 of the Complaint, and on
15 that basis denies those allegations. To the extent the allegations contained in
16 Paragraph 43 of the Complaint are legal conclusions, no response is required.

17 44. Courtyard is without sufficient knowledge or information to form a
18 belief as to the truth of the allegations in Paragraph 44 of the Complaint, and on
19 that basis denies those allegations. To the extent the allegations contained in
20 Paragraph 44 of the Complaint are legal conclusions, no response is required.

21 45. Courtyard admits that Plaintiffs pray for the relief requested but
22 denies Plaintiffs are entitled to any relief, and otherwise denies the allegations in
23 Paragraph 45 of the Complaint.

24 **Treble Damages Pursuant To Claims I, II, III Under The California**
25 **Accessibility Laws**

26 46. Courtyard is without sufficient knowledge or information to form a
27 belief as to the truth of the allegations in Paragraph 46 of the Complaint, and on
28

1 that basis denies those allegations. To the extent the allegations contained in
2 Paragraph 46 of the Complaint are legal conclusions, no response is required.
3 Courtyard further denies that Plaintiffs are entitled to an award of treble damages.

4 47. Courtyard denies the allegations contained in Paragraph 47 of the
5 Complaint.

6 48. Courtyard admits that Plaintiffs pray for the relief requested but
7 denies Plaintiffs are entitled to any relief, and otherwise denies the allegations in
8 Paragraph 48 of the Complaint.

9 49. Courtyard admits that Plaintiffs pray for the relief requested but
10 denies Plaintiffs are entitled to any relief, and otherwise denies the allegations in
11 Paragraph 49 of the Complaint.

12 **DEMAND FOR JUDGMENT FOR RELIEF:**

13 1. Courtyard admits that Plaintiffs seek the requested relief and denies
14 that Plaintiffs are entitled to any such relief.

15 2. To the extent not expressly admitted above, Courtyard denies each
16 and every allegation contained in the Complaint.

17 **AFFIRMATIVE DEFENSES**

18 Without admitting any of Plaintiffs' allegations or conceding the burden of
19 proof on any issue found to be an element of any of Plaintiffs' causes of action
20 rather than an element of any affirmative defense, Courtyard alleges the following
21 separate and independent affirmative defenses:

22 **FIRST AFFIRMATIVE DEFENSE**

23 1. Each cause of action asserted in the Complaint fails to allege facts
24 sufficient to state a cause of action against Courtyard.

25 **SECOND AFFIRMATIVE DEFENSE**

26 2. Plaintiffs have waived any and all claims that they may have or may
27 have had against Courtyard.

THIRD AFFIRMATIVE DEFENSE

3. Plaintiffs' claims are barred by the equitable doctrine of estoppel.

FOURTH AFFIRMATIVE DEFENSE

4. Plaintiffs' claims are barred by the equitable doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE

5. Plaintiffs' claims are barred, in whole or in part, by the applicable statutes of limitations.

SIXTH AFFIRMATIVE DEFENSE

6. Plaintiffs failed to properly mitigate the damages they seek and are thereby precluded from recovering those damages which could have reasonably been avoided by the exercise of due care on Plaintiffs' part.

SEVENTH AFFIRMATIVE DEFENSE

7. Plaintiffs voluntarily, with full knowledge of the matters referred to in the Complaint assumed any and all of the risks, hazards, and perils of the circumstances referred to in the Complaint and therefore assumed the risk of any injuries or damages sustained by Plaintiffs, if any at all.

EIGHTH AFFIRMATIVE DEFENSE

8. The incident(s) alleged by Plaintiffs were caused by the negligence and/or fault of other persons, corporations and/or entities and/or non-parties to this action, whether named or not named as parties, and Courtyard's liability, if any, should be reduced accordingly or eliminated.

NINTH AFFIRMATIVE DEFENSE

9. Plaintiffs' claims are barred, in whole or in part, by the doctrine of unclean hands.

TENTH AFFIRMATIVE DEFENSE

10. On information and belief, this action is barred by the doctrines of res judicata and collateral estoppel.

ELEVENTH AFFIRMATIVE DEFENSE

11. Courtyard's alleged actions, if done at all, are justified and/or privileged since, at all relevant times herein, Courtyard acted in accordance with its corporate and administrative policies.

TWELFTH AFFIRMATIVE DEFENSE

12. Courtyard's alleged actions, if done at all, are justified and/or privileged since, at all relevant times herein, Courtyard acted in accordance with the applicable laws, including, without limitation, the applicable laws of the United States of America and of the State of California.

THIRTEENTH AFFIRMATIVE DEFENSE

13. Courtyard avers as an affirmative defense that it intends to rely upon such other defenses as may become legally available hereafter or become apparent during discovery proceedings in this case and hereby reserves the right to amend its answer to assert any such defenses.

PRAYER

WHEREFORE Courtyard prays as follows:

1. That Plaintiffs take nothing by reason of their Complaint, and that judgment be entered for Courtyard;

2. That Courtyard be awarded reasonable attorneys' fees, expenses and costs;

3. For other such relief as the Court deems proper.

January 11, 2008

MAYER BROWN LLP
JOHN NADOLENCO
BRONWYN F. POLLOCK

By: s/ Bronwyn F. Pollock
Bronwyn F. Pollock
Attorneys for Defendant COURTYARD
HOLDINGS, LP
E-mail: BPollock@mayerbrown.com

PROOF OF SERVICE

I, Elena G. Griffin, declare:

I am employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 350 South Grand Avenue, 25th Floor, Los Angeles, California 90071-1503. On January 11, 2008, I served a copy of the within document(s):

**ANSWER OF DEFENDANT COURTYARD HOLDINGS, LP
TO PLAINTIFFS' COMPLAINT**

by transmitting via electronic means the document(s) listed above to the email address(es) set forth below on this date before 5:00 p.m.



by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.



by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.



by placing the document(s) listed above in a sealed UPS envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a UPS agent for delivery.



by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

PLEASE SEE ATTACHED SERVICE LIST

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on January 11, 2008, at Los Angeles, California.



Elena G. Griffin

SERVICE LIST

Theodore A. Pinnock, Esq.
David C. Wakefield, Esq.
Michelle L. Wakefield, Esq.
PINNOCK & WAKEFIELD, A.P.C.
3033 5th Ave., Suite 410
San Diego, CA 92103
Tel.: (619) 858-3671
Fax: (619) 858-3646
Email: TheodorePinnock@PinnockWakefieldLaw.com
Email: DavidWakefield@PinnockWakefieldLaw.com
Email: MichelleWakefield@PinnockWakefieldLaw.com

Scott J. Ferrell, Esq.
Lisa A. Wegner, Esq.
CALL, JENSEN & FERRELL
A Professional Corporation
610 Newport Center Drive, Suite 700
Newport Beach, CA 92660
Tel.: (949) 717-3000
Fax: (949) 717-3100
sferrell@calljensen.com
lwegner@calljensen.com

Richard R. Waite, Esq.
Mary M. Best, Esq.
KEENEY WAITE & STEVENS
A Professional Corporation
125 North Acacia Ave., Suite 101
Solana Beach, CA 92075
Tel.: (858) 523-2130
Fax: (858) 523-2135
rwaite@keenlaw.com
mbest@keenlaw.com